Supreme Court, U.S.
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No. 03 792 NOV 26 2003

In The

Supreme Court of the United States

JANET MAY KENNEDY,

Petitioner,

v.

BOBBY JOE KENNEDY,

Respondent.

On Petition For Writ Of Certiorari To The Texas Court Of Appeals, Third District, At Austin

PETITION FOR WRIT OF CERTIORARI

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61 pp

STATEMENT OF QUESTIONS PRESENTED

1. Is Petitioner entitled to a reversal of this cause since her due process rights were violated by having the divorce granted *sua sponte* by the court as a sanction for Petitioner's failure to endorse a check?

2. Is Petitioner entitled to a reversal of this cause because her due process rights granted under the 14th Amendment to the United States Constitution were violated when the Texas Court of Appeals found that the trial court's error in granting the divorce as a sanction was harmless?

PARTIES

The party to this petition is Janet May Kennedy.

The parties in the courts below were Janet May Kennedy, Bobby Joe Kennedy, and James Piper.

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PRIOR OPINIONS

The Texas Court of Appeals, Third District, at Austin, the opinion sought to be reviewed is published at *Kennedy v. Kennedy,* ___ S.W. 3d ___ (pet. denied), No. 03-02-00025-CV 2002 WL 31718226 (Tex. App. – Austin) (Appendix pp. 1-15). In an unpublished ruling, the Texas Supreme Court denied Petitioner's petition for review on June 19, 2003 (Appendix p. 38). In an unpublished ruling, the Texas Supreme Court denied Petitioner's motion for rehearing on August 28, 2003 (Appendix p. 39). The August 2, 2001 judgment of the trial court granting a divorce is unpublished (Appendix pp. 16-37).

JURISDICTION

Petitioner seeks this Court's review of the judgment entered on December 5, 2002 by the Texas Court of Appeals, Third District, at Austin by a Petition for Writ of Certiorari pursuant to the jurisdiction conferred by 28 U.S.C. § 1257(a). This petition is timely filed because it was mailed within 90 days of August 28, 2003, the date the Texas Supreme Court denied Petitioner's motion for rehearing of that court's decision not to grant a petition for review.

STATUTES INVOLVED

U. S. CONST. amend. XIV § 1.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they

reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Procedural History

The following chronological statement of facts is pieced together from the various reporter's records, the clerk's record and in particular the verified facts recited in the "Motion for Traditional Partial Summary" filed by attorney JAMES PIPER (hereinafter called "PIPER") who previously represented Respondent DR. BOBBY JOE KENNEDY (hereinafter called "DR. KENNEDY") during the pendency of this divorce at a time during which many of the following facts occurred:

April 12, 2000 – Brenda K. Smith, associate judge of the 22nd District Court of Hays County as part of Petitioner and DR. KENNEDY's pending divorce litigation conducts hearing on DR. KENNEDY's "Motion for Further Temporary Orders" and rules that certain expenses shall be paid out of the proceeds of the sale of the parties' home located on Pascal Lane.

May 26, 2000 – DR. KENNEDY files second "Motion for Further Temporary Orders" specifically requesting Petitioner to endorse check made payable to her and DR. KENNEDY for proceeds from the sale of Pascal Lane house.

June 2, 2000 – Written order is signed by Judge Ramsay, presiding judge of the 22nd District Court of Hays County accepting the associate judge's recommendations that Pascal Lane proceeds be used to satisfy certain debts of the parties.

June 8, 2000 – Trial court issues show cause order for Petitioner to appear at the trial court on June 16, 2000:

> "and at that time and to endorse and sign over the net proceeds check (#7134) in the amount of $186,305.81 to Janet May Kennedy and Bobby Joe Kennedy from Lione & Lee, P. C. Northwest IOLTA account. Another purpose of this hearing is to determine the mental capacity of Respondent and her ability to assist counsel. The Court will consider the propriety of possible necessity of appointing a guardian in this case."

There is no mention in the order about the possibility of the court assessing sanctions.

June 29, 2000 – Trial court signs *capias* for Petitioner's failure to show up at the trial court on June 16, 2000 at the scheduled show cause hearing.

July 7, 2000 – Petitioner is brought to the trial court from the Hays County jail where she has been held pursuant to the *capias*. Petitioner appears pro se and repeatedly requests for the assistance of counsel. The associate judge presiding over the hearing clearly becomes frustrated at the court's inability to get answers from Petitioner as to why she will not endorse the check in compliance with the court's previous temporary orders. *Sua sponte* the court inquires whether she can grant the parties a divorce as a sanction against Petitioner. With the encouragement of DR. KENNEDY's counsel, the associate judge makes

a finding that Petitioner's pleadings are struck and grants a divorce effective immediately.

July 10, 2000 – Petitioner files her written "Appeal of Hearing" specifically appealing her incarceration and "the order of the Associate Judge Brenda K. Smith dissolving the 33 year marriage of Janet Kennedy and Bobby Joe Kennedy". On the same day, Judge Ramsay, the presiding judge of the 22nd District Court, adopts the associate judge's written findings with a written order entitled "Order Holding Respondent in Contempt and for Commitment to County Jail" which includes the recitation that "the Court further finds that, as an additional sanction, Respondent's [Petitioner's] pleadings should be struck and a divorce granted as of today, July 7, 2000 . . . It is ordered that Bobby Joe Kennedy and Janet May Kennedy are divorced as of July 7, 2000."

July 17, 2000 – The Honorable Judge Ramsay, presiding judge presiding of the 22nd District Court, convenes court for the purpose of conducting a trial *de novo* pursuant to Petitioner's prior written request. At the hearing the court only addresses the issue of whether or not Petitioner is entitled to court-appointed counsel and wholly ignores that part of Petitioner's written objection to the finding by the associate judge that the parties 33-year marriage is dissolved.

April 16, 2001 – Trial court with the Honorable Fred Moore, visiting judge presiding, empanels a jury to hear evidence on the issues of conservatorship of the parties' minor child as well as valuation and characterization of property. The trial court's only concern about the divorce being granted 9 months prior to jury selection is to determine on what date the property should be valuated for the purpose of making its just and right division.

April 23, 2001 – At the conclusion of the jury trial on April 23, 2001, Judge Moore made no oral rendition and took the case under advisement.

May 23, 2001 – Judge Moore makes his rendition in the form of a letter to all counsel of record. This written rendition gives detailed rulings on how the marital estate is to be divided and then recites, "All requested relief not specifically granted herein is denied." Conspicuously absent from the written rendition is any mention of the granting of a divorce.

October 10, 2001 – Trial court signs "Modified Judgment" which states:

> "Divorce was previously granted in this cause by the Honorable Charles Ramsay, on July 7, 2000 by interlocutory order, and it is accordingly ORDERED, ADJUDGED and DECREED that BOBBY JOE KENNEDY, Petitioner, and JANET MAY KENNEDY, Respondent, are divorced and the marriage between them is dissolved."

(Appendix p. 17).

December 5, 2002 – The Austin Court of Appeals overruled Petitioner's argument that she has never been legally divorced and is still married to Respondent DR. KENNEDY when it specifically states in its December 5, 2002 opinion:

> "The Kennedys were divorced when the trial court **rendered** its judgment after the trial on the merits. At the time the judgment was **rendered**, the divorce was not contested . . . The Kennedys are no longer married but have been divorced since August, 2001, when the judgment of divorce was **rendered**."

Kennedy v. Kennedy, 2002 WL 32001876, *5 (Tex. App. – Austin) 2002 (Appendix p. 11, Emphasis added.) When affirming the judgment of the trial court, the Austin Court of Appeals did however acknowledge that the granting of the divorce by the trial court as a sanction was error but excused that error as being harmless. See *Kennedy v. Kennedy,* 2002 WL 32001876, *3 (Appendix p. 10).

Factual Summary

Though error is never presumed, it is hard to imagine any circumstances under which the error could not be harmful when a trial judge in front of the jury hearing the parties' divorce erroneously declares that the parties are already divorced. In the case *sub judice* the harm was not only monetarily substantial, but it also wrongfully elevated the credibility of DR. KENNEDY and his witnesses in the eyes of the jury. Even in cases where there is no financial harm, the esteem for which this country and the State of Texas hold the sanctity of the bonds of marriage requires something more than to have those bonds discarded by an ill tempered associate judge's illegal dissolution.

Petitioner asserts she is still married to DR. KENNEDY because no judge with authority has ever rendered the parties divorced. In fact, just the opposite is true. When the trial court's presiding judge made his written rendition delineating how the parties' marital estate must be divided, he specifically denied all other relief which would include requested divorce relief. It can be surmised that Judge Moore's failure to specifically include divorce relief in his rendition was not so much an intent on his part to keep the parties married, but merely his way of

erroneously treating the divorce as already having been granted as part of the sanctions order. Whatever the Judge's thinking, he clearly did not include the granting of a divorce as part of his rendition.

ARGUMENT

a. Because the error is systemic, it cannot be considered harmless.

Though the Austin appellate court recognizes the error of the trial court in its improper granting of a divorce as a sanction, its conclusion that the treatment of one's marital status is nothing more than harmless error seems almost cavalier. "Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions." *Griswold v. Connecticut*, 381 U.S. 479, 486, 85 S.Ct. 1678, 1682, 14 L. Ed. 2d 510 (1965). Being married in part defines who you are and comes with privileges granted by law. Under the Texas Constitution, being married endows you with community property rights that most other states do not recognize. See TEX. CONST. art. XVI, § 15.

Crucial to the testimony of DR. KENNEDY and his witnesses is their treatment of the July 7, 2000 sanctions order as granting a valid divorce. Petitioner's own daughter, Priscilla, when called to the stand by her father DR. KENNEDY, made it clear to the jury that she considered her parents already divorced and her father legally remarried to

Linda Walker. The reliance on July 7, 2000 as being the date of divorce was not limited to DR. KENNEDY and his witnesses. The trial court on more than one occasion with the jury in the box acknowledged that it was not only recognizing the illegal July 7, 2000 divorce of the parties, but also DR. KENNEDY's subsequent remarriage to Linda K. Walker.

> **Q.** (DR. KENNEDY'S COUNSEL): And are you married to Bobby Kennedy?
>
> **A.** (LINDA WALKER): Yes, I am.
>
> **Q.** How did you first meet this interesting family?
>
> **A.** I'm a professor at Baylor –
>
> (PETITIONER's COUNSEL): What is the relevancy of this?
>
> (DR. KENNEDY'S COUNSEL): It has to do with claims asserted by Ms. Kennedy about January of '99.
>
> THE COURT: About how she first met or – I've got custody in issue, **I've got a new wife.** It's relevant to see the situation within which the child might be placed. It's overruled.

Further, the trial court did not limit its acknowledgment of DR. KENNEDY's marriage to Ms. Walker solely to the issue of custody as evidenced by the following, to-wit:

> **Q.** (DR. KENNEDY'S Counsel): – After he E-mailed you?
>
> **A.** LINDA WALKER: He said, I'm in the lion's den, I guess. Priscilla – I just wrote to ask her. I didn't expect her to show it to you.

(PETITIONER's Counsel): It's more hearsay, Your Honor.

THE COURT: It's sustained. And then they got to be friends, **and eventually they got married, and here we are.**

(DR. KENNEDY'S Counsel): That's romantic, Judge.

These comments by the trial judge clearly established in the eyes of the jury unwarranted credibility to DR. KENNEDY and his testimony; not to mention the testimony of Linda Walker who was wrongfully elevated from her true position of a paramour to that of lawful wife. See TEX. FAM. CODE § 6.202 (Vernon 1998); *Dodd v. Dodd*, 17 S.W.3d 714, 716 (Tex. App. – Houston [1st Dist.] 2000, no pet.). Because the trial court's error is systemic, it cannot be considered harmless.

b. Because the error caused substantial monetary deprivation, it cannot be considered harmless.

The harm to Petitioner can also be measured in dollars and cents as evidenced by the following:

(DR. KENNEDY's Counsel): Your Honor, the honeymoon cost would be after the divorce, and it wouldn't be relevant . . .

THE COURT: Do you have any comments, Mr. Hemmi?

A. MR. HEMMI (Petitioner's Counsel): Well, yes. I would think that the salary that the man earned and the receivables that were in the practice at the time were what generated the monies.

THE COURT: It's sustained. As to any amounts that were spent from the date – What date did she say they were married, August?

MR. HEMMI: August.

THE COURT: Sometime in August.

LINDA WALKER: August 12th.

THE COURT: You can go into anything from August 11th and before.

MR. HEMMI: May I make a brief statement to the Court before – and ask the Court to reconsider its ruling?

THE COURT: Yes, sir.

MR. HEMMI: All right. This man is a doctor. He has work in process. His only source of income is for his time, his toil, his labors and talents. He bills the insurance companies. There is a lag time between the time that he receives the money into the account. And if the Court is going to limit the amount that is the day after the divorce, then the Court is going to have to pre-suppose that he did all of his labors and times and toils and talents and earned all of his money within one day, received the money within one day and paid the expenses within one day . . .

THE COURT: The objection is sustained. We will talk about the time up to the marriage [to Ms. Walker], not after.

And just what kind of money is Petitioner losing out on? In the year 2000 alone when the divorce was allegedly granted, DR. KENNEDY's medical practice by itself

generated a net revenue of $714,366.00. The trial court's failure to include as part of Petitioner's marital estate assets accumulated after DR. KENNEDY's putative marriage to Linda Walker clearly demonstrates substantial harm.

c. Granting a divorce by method not described by legislature violates Petitioner's due process rights.

"Marriage, as creating the most important relation in life, as having more to do with the morals and civilization of a people than any other institution, has always been subject to the control of the legislature." *Maynard v. Hill,* 125 U.S. 190, 205, 8 S.Ct. 723, 726, 31 L. Ed. 2d 654 (1988). "We are dealing here with legislation which involves one of the basic civil rights of man." *Skinner v. State of Oklahoma,* 316 U.S. 535, 541, 62 S.Ct. 1110, 1113, 86 L. Ed. 1655 (1942). In the case *sub judice*, Petitioner's due process rights were violated because the procedure followed to dissolve this most sacred relationship was not that which was prescribed by the legislature's express statutory authority.

d. A trial court's pronouncement of its decision constitutes rendition.

Petitioner takes great exception to the court of appeals' finding that a divorce has previously been rendered. "Rendition of judgment is the judicial act by which the court declares the decision of the law upon the matters at issue." *W.C. Banks, Inc. v. Team, Inc.*, 783 S.W.2d 783, 785 (Tex. App. – Houston [1st Dist.] 1990, no writ) citing *Coleman v. Zapp*, 151 S.W. 1040, 1041 (Tex. 1912). "A

judgment is rendered when the trial judge officially announces a decision of the law upon the matters at issue either orally in open court or by written memorandum filed with the clerk." *Skidmore v. Glenn*, 781 S.W.2d 672, 673 (Tex. App. – Dallas 1989, no writ).

e. Austin Court of Appeals' treatment of judgment as rendition conflicts with prior case law.

Since the Austin Court of Appeals opined that the parties "have been divorced since August, 2001, when the judgment of divorce was rendered", it must be assumed that the court of appeals erroneously treated the entry of the initial written decree of divorce signed August 2, 2001 as the trial court's rendition. See *Kennedy v. Kennedy,* 2002 WL 32001876, *5 (Appendix p. 1). "Rendition of a judgment is distinguishable from entry of a judgment." *Skidmore v. Glenn*, 781 S.W.2d 672, 673 (Tex. App. – Dallas 1989, no writ); see also *Stephens v. Henry S. Miller Co.*, 667 S.W.2d 250, 252 (Tex. App. – Dallas 1984, writ dism'd agr.). "Entry of a judgment is a purely ministerial act by which the trial court's judgment is made of record and preserved." *Skidmore v. Glenn*, 781 S.W.2d at 673. A written judgment has been held to constitute rendition only if no actual rendition was previously pronounced. See *Shepherd v. Estate of Long,* 480 S.W.2d 51, 53-54 (Tex.Civ.App. – Fort Worth 1972, writ ref'd n.r.e.). The entry of the judgment signed in August, 2001 cannot be considered the court's rendition in light of the court's prior May 23, 2001 letter. The court of appeals erred in treating entry of the initial judgment as a rendition. "Once judgment is rendered, the subsequent reduction to writing is a purely ministerial act by which evidence of the judicial act is recorded." *Harper v. Welchem, Inc.*, 799 S.W.2d 492, 494

(Tex. App. – Houston [14th Dist.] 1990, no writ) citing *Knox v. Long*, 257 S.W.2d 289, 292 (Tex. 1953).

f. Only "rendition" of divorce occurred at sanctions hearing.

The only attempt at rendering a divorce by any judge was done by the associate judge at the conclusion of the July 7, 2000 sanctions hearing. The court of appeals has already correctly found that those sanctions imposed by the associate judge could not effectuate a divorce. See *Kennedy v. Kennedy,* 2002 WL 32001876, *4 (Appendix p. 1). Clearly, a void sanctions ruling should not be transformed into an enforceable order merely by subsequently memorializing the associate judge's void assessment of sanctions into the body of a final decree. The only lawful rendition is that found in the May 23, 2002 letter. Because the written judgment must agree with the written rendition and there has been no lawful rendition granting a divorce, the parties are, in fact, still legally married. See *Knox v. Long,* 257 S.W.2d 289, 291-92 (Tex. 1953); *Burgess v. Burgess,* 834 S.W.2d 538, 540 (Tex. App. – Houston [1st Dist.] 1992, no writ).

g. Sanctions only authorized as remedy for discovery abuse.

"The purposes of discovery sanctions are to: (1) secure the parties' compliance with the rules of discovery, [cite omitted] (2) to deter other litigants from violating the discovery rules [cite omitted] (3) punish parties that violate the rules of discovery." *Bodnow Corp. v. City of Hondo,* 721 S.W.2d 839, 840 (Tex. 1986). "The trial court abuses its discretion if the sanction it imposes does not

further one of the purposes the discovery sanctions were intended to further." *Id.* at 840. Clearly, the proceeds check which Petitioner refused to endorse had nothing to do with discovery in her pending cause of action for divorce. There is no authority under the Rules of Civil Procedure to strike Petitioner's pleadings and/or grant DR. KENNEDY a divorce on a default basis as a result of Petitioner's failure to sign the back of the proceeds check.

h. Imposition of sanctions by court *sua sponte* violates due process rights and order granting divorce is therefore void.

Even if sanctions were available as a tool to enforce Petitioner's refusal to sign the check, the trial court still abused its discretion by its imposition of the sanctions *sua sponte*. "A trial court generally has no authority to impose sanctions *sua sponte*, inasmuch as it deprives the party against whom sanctions are to be imposed of notice and an opportunity to be heard." *Hilliard v. Bennett,* 925 S.W.2d 338, 341 (Tex. App. – Corpus Christi 1996, orig. proceeding); see also *Shockey v. A. F. P., Inc.,* 905 S.W.2d 629, 630 (Tex. App. – Houston [14th Dist.] 1995, no writ). "We have found no authority for the proposition that a trial court may impose sanctions *sua sponte* . . . notice is essential for the proper imposition of sanctions." *Zep Mfg. Co. v. Anthony,* 752 S.W.2d 687, 689-90 (Tex. App. – Houston [1st Dist.] 1988, orig. proceeding). In the case *sub judice*, the show cause order made no mention of sanctions or that Petitioner's appearance was being requested for a trial on the merits for the finalization of the pending divorce. At the hearing itself, the associate judge is clearly unsure as to her own authority to grant the divorce as a sanction as evidenced by her asking DR. KENNEDY's counsel whether she has such a right. And the final slap to Petitioner's due

process rights is the entry of the order entitled "Order Holding Respondent in Contempt and for Commitment to County Jail" which on the first line states, "On July 7, 2000, the Court heard [DR. KENNEDY's] Petition for Enforcement." The only problem is that DR. KENNEDY never filed a petition for enforcement . . . just the show cause order as part of his "Motion for Further Temporary Orders". This lack of adherence to fundamental notice and due process in granting the so-called divorce would be laughable were it not for its devastating consequences. "Under these circumstances, the trial court's order is void." *Zep Mfg. Co. v. Anthony,* 752 S.W.2d at 690.

CONCLUSION

"Marriage is one of the basic civil rights of man fundamental to our very existence and survival." *Loving v. Commonwealth of Virginia*, 388 U.S. 1, 12, 87 S.Ct. 1817, 1824, 18 L. Ed. 2d 1010 (1967). Petitioner is entitled to a new trial because her due process rights guaranteed by the Fourteenth Amendment to the United States Constitution were abrogated when the Texas Court of Appeals upheld the trial court's *sua sponte* decision to grant a divorce as part of sanctions.

Dated: November 26, 2003.

Respectfully submitted,

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Janet May **KENNEDY**, Appellant,
v.
Bobby Joe KENNEDY and James Piper, Appellees.

No. 03-02-00025-CV.

Dec. 5, 2002.
Rehearing Overruled Feb. 27, 2003.

Shawn Casey, Houston, for appellant.

Robert C. McCabe, Holm, Bambace & McCabe, L.L.P., Houston, for James Piper.

J. Terry Weeks, Austin, Pamela E. George, Houston, for Bobby Joe Kennedy.

Before Justices KIDD, B.A. SMITH, and YEAKEL.

BEA ANN SMITH, Justice.

After thirty-two years of marriage and five children, Dr. Bobby Joe Kennedy and Ms. Janet Kennedy went through an extremely contentious divorce. Early on in the proceedings, the trial court ordered the Kennedys to sell one of their properties and use the proceeds to pay legal fees and other expenses. For reasons unclear from the record, Ms. Kennedy refused to endorse the check after the property was sold. This caused the court to hold her in contempt and, inexplicably, to strike her pleadings and grant an interlocutory divorce as a sanction. After a trial on the merits, the court rendered a final decree of divorce and divided the parties' property. On appeal Ms. Kennedy complains among other things that the trial court erred in: (1) granting an interlocutory divorce as a sanction, (2) granting summary judgment in favor of James Piper, Dr.

Kennedy's attorney, on her claims that he committed abuse of process and intentional infliction of emotional distress by recommending that the court grant the divorce as a sanction, and (3) failing to award her post divorce maintenance in the face of a jury finding that she suffered from a disability that precluded her from employment. Because we hold that the trial court's error in granting the interlocutory divorce was harmless, that the trial court properly granted summary judgment in favor of Mr. Piper, and that the trial court was not required to grant Ms. Kennedy post divorce maintenance, we will affirm the judgment of the trial court.

BACKGROUND

Dr. Kennedy filed for divorce in December 1999. In March 2000, the district court entered temporary orders granting Dr. Kennedy primary conservatorship of the couple's teenage child, granting Ms. Kennedy temporary spousal support, and, among other things, requiring the parties to "cooperate in the listing and sale of the property at 85 Pascal Lane, Austin, Texas, with the proceeds to be placed in an account . . . [to] be used to pay attorney's fees and related expenses, debts, and extraordinary expenses of either party."[1]

After the property was sold, Ms. Kennedy refused to endorse the check. Dr. Kennedy then requested the court

[1] On June 2, 2000, the court entered further temporary orders requiring that the proceeds of the sale be applied to pay: (1) Ms. Kennedy's May, June, and July 2000 temporary support, (2) specific attorney's fees of both the parties, and (3) reimbursement to Dr. Kennedy for Ms. Kennedy's moving expenses that he had previously paid.

to order Ms. Kennedy to endorse the check so the proceeds could be deposited into an account as ordered. The court ordered Ms. Kennedy to appear on June 16, 2000 for a hearing on the issue. Ms. Kennedy scheduled shoulder surgery for that day and did not appear. Less than two weeks later, the court ordered that Ms. Kennedy be brought before it. Ms. Kennedy was arrested and, on July 7, 2000, brought before an associate judge. By this time, Ms. Kennedy had fired her lawyer. At the hearing, Ms. Kennedy requested that the associate judge appoint her an attorney because she was indigent. The associate judge denied her request. Ms. Kennedy then testified that she understood that she could be held in contempt and jailed if she did not endorse the check. Repeatedly claiming that she needed an attorney, Ms. Kennedy would not respond to the requests of Mr. James Piper, counsel for Dr. Kennedy, and the demand of the court, that she explain her refusal to endorse the check. The following exchange then took place:

> [THE COURT]: Mr. Piper, can I grant the divorce as a sanction? I think I can and then we'll come back with some property issues.
>
> [MR. PIPER]: Well, you probably can.
>
> [THE COURT]: Would it make a difference to you Mrs. Kennedy, understanding that if you don't sign the check today, I'm going to grant the divorce today and you'll come back and sign off (inaudible) concerning your son.
>
> [MS. KENNEDY]: I don't quite understand what you're doing.
>
> [THE COURT]: Well, in certain circumstances as what's called a 'sanction for punishment' for failure to follow the rules or orders, the court can grant a

> divorce as a sanction. And so it's possible that if you don't sign the check today, I'll grant the divorce today, I'll grant the divorce as of today.
>
> [MS. KENNEDY]: I understand. Well, I'm not in control of that.
>
> [THE COURT]: Excuse me. Knowing that is a possibility, you are still not willing to endorse the check?
>
> [MS. KENNEDY]: I'm not willing to endorse the check today.

In closing argument, Mr. Piper urged the court to jail Ms. Kennedy until she agreed to sign the check, to grant the divorce as a sanction, and to grant him his attorney's fees. After closing argument, the associate judge again gave Ms. Kennedy the opportunity to endorse the check. When she again refused, the associate judge held her in contempt, granted the divorce, and granted Mr. Piper $3,000 in attorney's fees. The associate judge then reduced her order to writing, striking Ms. Kennedy's pleadings as a further sanction. Three days later, on July 10, 2000, the trial court approved and adopted the associate judge's order.

Ms. Kennedy filed her notice of appeal of the associate judge's ruling on the same day the trial court adopted the order.[2] *See* Tex. Fam.Code Ann. § 201.015 (West 2002). In

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[2] Ordinarily, the referring trial court cannot approve and adopt an associate judge's recommended order until after it hears a party's appeal. *See Santikos v. Santikos,* 920 S.W.2d 731, 734 (Tex.App.-Houston [1st Dist.] 1996, writ denied). However, section 201.013 of the Texas Family Code requires the court to immediately review associate judge's temporary detention and incarceration orders:

(Continued on following page)

her notice of appeal, she specifically challenged the ruling jailing her for contempt and the ruling "dissolving the 33 year marriage of Janet Kennedy and Bobby Joe Kennedy." She therefore was entitled to a de novo hearing on those issues. *See id.* At the de novo hearing, however, the trial court mistakenly assumed that the appeal was limited to the issues of indigence and Ms. Kennedy's request for a court-appointed attorney. The court coordinator and Ms. Kennedy herself, apparently confused and still without an attorney, confirmed the court's mistake.[3] When Ms. Kennedy then refused to answer Mr. Piper's questions without a lawyer, the court denied the appeal. A few weeks later, the court ordered that the check be reissued, payable to

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> An order by an associate judge for the temporary detention or incarceration of a witness or party shall be presented to the referring court on the day the witness or party is detained or incarcerated. The referring court, without prejudice to the right of appeal provided by section 201.015, may approve the temporary detention or incarceration or may order a temporary release of the party or witness . . . pending appeal. If the referring court is not immediately available, the associate judge may order the release of the party . . . pending appeal or may continue the person's incarceration for not more than 72 hours.

Tex. Fam.Code Ann. § 201.013(c) (West 2002). In this case, the court adopted the entire order of the associate judge within 72 hours rather than merely approving the temporary detention pending appeal.

[3] At the hearing, in response to the court's question, Ms. Kennedy indicated that she was appealing the "fact that an attorney . . . [had] not been afforded [her]." At the hearing's conclusion, after being told that she was not required to answer Mr. Piper's questions without a lawyer, Ms. Kennedy declined to respond to the court's question of whether she was appealing anything other than the issue of her indigence. Ms. Kennedy's confusion might have been compounded by the fact that the notice of setting that the court coordinator delivered to her in jail stated that it would be an appeal of the associate judge's "ruling on indigency hearing."

the Hays County District Clerk, and that Ms. Kennedy be released from jail.

Ms. Kennedy then filed a counterpetition for divorce alleging that the marriage had become insupportable. This pleading also alleged that Dr. Kennedy was guilty of intentional infliction of emotional distress and abuse of process. She later amended her counterpetition and added Mr. Piper as a defendant. Her claims of intentional infliction of emotional distress and abuse of process related to the incidents surrounding the contempt finding and interlocutory divorce decree. Dr. Kennedy and Mr. Piper each filed traditional and no-evidence motions for summary judgment concerning these claims. The court granted the summary judgment without stating its grounds.

Issues regarding the division of the property, conservatorship, and spousal maintenance were tried to a jury a short time later. At trial, both parties were represented by attorneys and offered evidence. In its verdict, among other things, the jury characterized and valued the Kennedys' property and found that Dr. Kennedy should be named sole managing conservator of Will Kennedy, the couple's only minor child. The jury also found that Ms. Kennedy was "unable to support herself because of an incapacitating physical or mental disability," a statutory predicate to an award of post divorce maintenance.

In its final judgment, the trial court divided the couple's property and determined that post divorce maintenance was not warranted. It named Dr. Kennedy sole managing conservator and Ms. Kennedy possessory conservator of Will. The court then ordered that Ms. Kennedy was only entitled to possession of Will at times

mutually agreed to by the parties and "as recommended by Dr. Thomas Lowery," a court-appointed clinical psychologist who had evaluated Ms. Kennedy's relationship with Will.

DISCUSSION

In her first issue, Ms. Kennedy claims that the associate judge abused her discretion by striking Ms. Kennedy's pleadings and granting the divorce as a sanction for her refusal to endorse the check. In her third issue, she claims that the trial court erred in failing to properly conduct a de novo appeal of this erroneous interlocutory order.[4] We agree with Ms. Kennedy that the associate judge acted without authority in granting an interlocutory divorce as a sanction in July 2000. We also agree with Ms. Kennedy that the trial court did not properly conduct her de novo appeal from that order. However, because Ms. Kennedy failed to show how she was harmed by either of these actions, we will overrule these points of error.

We note initially that the Kennedys were not divorced until the judgment of divorce was rendered after the trial on the merits. The "interlocutory divorce" was entirely without legal effect. The family code requires that "[i]n a decree of divorce or annulment, the court *shall* order a division of the estate of the parties that it deems just and right." Tex. Fam.Code Ann. § 7.001 (West 1998) (emphasis

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[4] Although it is not challenged here we also note that absent a contractual or statutory basis, a trial court lacks authority to assess attorney's fees based upon a finding of contempt, as the associate judge did here. *See Equitable Trust Co. v. Lyle,* 627 S.W.2d 824, 826 (Tex.App.-San Antonio 1982, writ ref'd n.r.e.).

added). This mandatory provision makes the division of the couple's property an essential part of any valid divorce decree. *See Adam v. Stewart,* 552 S.W.2d 536, 537-38 (Tex.Civ.App.-Houston [14th Dist.] 1977, orig. proceeding) (construing predecessor to Tex. Fam.Code Ann. § 7.001). The property division cannot be severed from the divorce action. *Id.* Allowing an interlocutory divorce decree to become effective before a final judgement dividing the party's property would create innumerable problems:

> For example, after [such] a 'divorce', does a trial court still have discretion to order a division of the estate as the court may deem 'just and right', or must it divide equally the community property of the parties held as tenants in common? After a 'divorce', may the court continue to impose upon the husband a requirement to pay temporary alimony? In the event of a remarriage of either or both of the parties following such a 'divorce', does the accumulation of property in the interim between the divorce and final adjudication accrue to the benefit of the estate of the parties in litigation or to the community estate of the current marriage?

Id. However frustrated the associate judge was with Ms. Kennedy's behavior, she had no legal authority to grant an "interlocutory divorce" as a sanction.

Ms. Kennedy's actions at the hearing validly subjected her to contempt of court but not to sanctions authorized by statute or rule. *See, e.g.,* Tex. Civ. Prac. & Rem.Code § 10.004 (West 2002) (sanctions for groundless pleadings); Tex.R. Civ. P. 13 (same); Tex R. Civ. P. 215 (sanctions for discovery abuse). Perhaps the trial court thought that it was acting pursuant to its inherent power to sanction for abuse of the judicial process. *See Kutch v. Del Mar College,* 831 S.W.2d 506, 510 (Tex.App.-Corpus Christi 1992, no

writ). But a court cannot invoke its inherent power to sanction without some evidence and factual findings that the conduct complained of significantly interfered with the court's legitimate exercise of one of its traditional core functions. *Id.* There is no such evidence here. Ms. Kennedy's failure to endorse the check was adequately dealt with by holding her in contempt. Striking her pleadings and granting an unworkable interlocutory divorce was extraordinary and unwarranted.

The trial court also erred in adopting and approving the associate judge's order in its entirety before hearing Ms. Kennedy's de novo appeal. *See Santikos v. Santikos,* 920 S.W.2d. at 734. Although the court was required to conditionally approve the associate judge's contempt order within seventy-two hours for Ms. Kennedy to remain incarcerated, it should have limited its approval to Ms. Kennedy's incarceration pending her de novo appeal. *See* Tex. Fam.Code Ann. § 201.013(c) (West 2002).

We note additionally that although Ms. Kennedy was not entitled to special treatment as a pro se litigant, *see Robinson v. Surety Ins. Co.,* 688 S.W.2d 705, 710 (Tex.App.-Fort Worth, 1985, no writ), the trial court could have taken more care in conducting her de novo hearing. The court presumably had Ms. Kennedy's notice of appeal in hand. It could have made sure that all her issues were addressed even though Ms. Kennedy confusedly indicated at the hearing that her appeal was limited to the issues of her indigence and lack of a lawyer.

Although the trial court erred, Ms. Kennedy has failed to show how she was harmed by the trial court's handling of her de novo appeal.[5] We have held the interlocutory order of divorce invalid; however, a valid, final, divorce was granted after the trial on the merits. Furthermore, Ms. Kennedy has not shown how her case was affected by her pleadings being struck. After the July 7, 2000 hearing, she filed three successive counterpetitions for divorce. At the eventual trial on the merits, Ms. Kennedy was not prevented from raising any issues. She put on several witnesses and had her questions submitted to the jury.

Similarly, Ms. Kennedy has not shown how the interlocutory rendition of a purported divorce adversely affected her case. The trial court adopted the jury's property valuations, which were for the most part, the exact values offered by Ms. Kennedy. There is no evidence that the trial court used the July 2000 date of the interlocutory divorce decree in making its just and right division of the couple's property.[6] Moreover, even if it had, Ms. Kennedy has not shown how the use of that earlier date would have adversely affected her. Most of the couple's assets had similar values in July 2000 and in April 2001, and the assets with

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[5] The requirement that the referring trial court hold a de novo hearing when a notice of appeal is properly filed is mandatory. *Attorney General v. Orr,* 989 S.W.2d 464, 469 (Tex.App.-Austin 1999, no writ). Here, the trial court held a de novo hearing and gave the appealing party a opportunity to be heard, although both the court and the pro se litigant focused only on the issue of indigence at this hearing.

[6] When the issue of the valuation date was discussed at trial, Ms. Kennedy was ambivalent about what date should be used, arguing, in effect, that the trial court should use whatever date was most favorable to her.

fluctuating values were divided roughly equally. We hold that Ms. Kennedy was not harmed by the interlocutory order. She was therefore similarly unharmed by the trial court's failure to properly conduct a de novo appeal of that order.[7]

In her fourth and fifth issues, Ms. Kennedy argues that: (1) the trial court erred in recognizing July 7, 2000 as the actual date of divorce, (2) the parties are still married, and therefore, (3) because Dr. Kennedy is still accumulating community property, the division "is not only not just and right, but is wholly inaccurate." These issues lack merit.[8] The Kennedys were divorced when the trial court rendered its judgment after the trial on the merits. At the time the judgment was rendered, the divorce was not contested. Both parties had live pleadings alleging that residency requirements were met and that the marriage had become insupportable. Over the course of the proceedings, the court admitted evidence supporting these allegations, including Dr. Kennedy's fairly detailed description of

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[7] Because we hold that entry of the interlocutory order was harmless error, we need not address Ms. Kennedy's complaint that she was denied due process because she was not on notice that the July 2000 hearing would encompass the merits of the divorce action. As we have stated, Ms. Kennedy was not prevented from raising any issue at the later trial on the merits. She was therefore afforded a full and fair hearing on the issue of divorce.

[8] It is questionable whether Ms. Kennedy preserved these issues for review. In her motion for new trial, she does not claim that she and Dr. Kennedy are still married. The closest she comes to the claims she raises here on appeal are the separate, and quite naked, claims that: (1) the trial court's division of the marital estate is not just and right, and (2) the trial court erroneously found that the parties had already been divorced at the time of the trial on the merits. *See* Tex.R.App. P. 33.1.

the deterioration of the marriage. In its judgment, the trial court found that it had jurisdiction over the parties and the subject matter of the case and stated that "after receiving the evidence, . . . [the court] finds that a divorce should be granted." The Kennedys are no longer married but have been divorced since August 2001, when the judgment of divorce was rendered.

In her seventh and eighth issues, Ms. Kennedy argues that the trial court erred in failing to award her post divorce maintenance in the face of a jury finding that she was "unable to support herself because of an incapacitating physical or mental disability."

Ms. Kennedy argues that the jury's determination required the trial court to award her post divorce maintenance. This is not the case. The family code provides for post divorce maintenance when:

> The duration of the marriage was 10 years or longer, the spouse seeking maintenance lacks sufficient property, *including property distributed to the spouse under this code,* to provide for the spouse's minimum reasonable needs . . . and the spouse seeking maintenance . . . is unable to support himself or herself through appropriate employment because of an incapacitating physical or mental disability.

Tex. Fam.Code Ann. § 8.051 (West Supp.2003) (emphasis added). The jury did find that Ms. Kennedy suffered from a disability that precluded her from employment. But the jury did not, and could not, find that the Ms. Kennedy "lacked sufficient property, including property distributed to the spouse under this code, to provide for her minimum reasonable needs." The trial court, not the jury, is empowered to make a just and right property division. In this

case, after dividing the property, the trial court found that Ms. Kennedy indeed had sufficient property to provide for her minimum reasonable needs. It did not ignore the jury's finding regarding her disability, but found that another statutory requirement was missing. It did not err in failing to grant Ms. Kennedy post divorce maintenance.

In her sixth issue, Ms. Kennedy argues that the trial court abused its discretion in failing to award her enforceable periods of possession of her minor son Will. Although it is unwise, and probably an improper delegation of its authority, for a court to grant access only as recommended by a consulting psychologist, as this court did, Ms. Kennedy conceded at oral argument that because Will turns eighteen in January 2003, the issue of court ordered access will then be moot.

In her ninth issue, Ms. Kennedy argues that the trial court erred in granting Mr. Piper's motions for summary judgment. After Ms. Kennedy had joined Mr. Piper to the suit, alleging tort claims against him, Mr. Piper filed both traditional and no-evidence summary-judgment motions. The court granted summary judgment in favor of Mr. Piper without stating its grounds.

The Standards for reviewing a traditional motion for summary judgment are well established: (1)the movant for summary judgment has the burden of showing that no genuine issue of material fact exists and that she is entitled to judgment as a matter of law; (2)in deciding whether there is a disputed material fact issue precluding summary judgment, evidence favorable to the nonmovant will be taken as true; and (3)every reasonable inference must be indulged in favor of the nonmovant and any doubts resolved in her favor. *Nixon v. Mr. Prop. Mgmt. Co.*,

690 S.W.2d 546, 548-49 (Tex.1985). A defendant who moves for tradional summary judgment has the burden of disproving one essential element of each pleaded cause of action or showing that the plaintiff cannot succeed on any theory pleaded. *See San Antonio Express News v. Dracos*, 922 S.W.2d 242, 247 (Tex.App. – San Antonio 1996, no writ).

A review of Piper's traditional summary-judgment motion and proof reveals that he was to entitled to judgment as a matter of law. At the July hearing, the associate judge, not Mr. Piper, suggested granting the interlocutory divorce to induce Ms. Kennedy to endorse the check; when asked by the court, Piper said that he *believed* an interlocutory divorce could be granted as a sanction. Then, at closing argument, he urged the court to grant the divorce as a sanction. Nothing in the summary-judgment proof indicates that Piper's position was motivated by anything but his good faith understanding of the law and his desire to represent his client. He was not improperly using the legal process with an ulterior motive, as is required for Ms. Kennedy to prevail on a claim of abuse of process. *See Bossin v. Towber,* 894 S.W.2d 25, 33 (Tex.App.-Houston [14th Dist.] 1994, writ denied). Moreover, his actions were patently not "extreme and outrageous," as is required for Ms. Kennedy to prevail on her claim of intentional infliction of emotional distress.

Because we are affirming the trial court's judgment on the grounds Mr. Piper raised in his traditional motion for summary judgment, we need not address whether the court erred in granting his no-evidence motion.

CONCLUSION

The trial court erred in granting an interlocutory divorce; the parties were not divorced in July 2000 by the invalid order. On August 2, 2001, following a jury trial, the trial court rendered a judgment granting the divorce, dividing the property, addressing issues of conservatorship, and denying spousal support.[9] The parties were then divorced. Appellant has failed to show how her substantial rights to property were affected by the trial court's interlocutory order. We uphold the evaluations used by the trial court in dividing the property and uphold its denial of spousal support. Likewise, although the trial court erred in wholly delegating decisions regarding conservatorship to a psychologist, that issue has become moot due to the age of the child. We therefore affirm the trial court's judgment.

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[9] The judgment granting divorce was rendered when signed on August 2, 2001. On October 10, 2001, the court signed a modified judgment addressing some property issues not relevant here.

NO. 99-1437

IN THE MATTER OF THE MARRIAGE OF	§	**IN THE DISTRICT COURT**
BOBBY JOE KENNEDY AND JANET MAY KENNEDY	§	**274TH JUDICIAL DISTRICT**
AND IN THE INTEREST OF WINCHESTER WILL KENNEDY, A CHILD	§	**HAYS COUNTY, TEXAS**

MODIFIED JUDGMENT

On April 16, 2001, this cause came on for trial before the court and a jury. Petitioner, BOBBY JOE KENNEDY, appeared in person and by attorney, J. TERRY WEEKS, and announced ready for trial. Respondent, JANET MAY KENNEDY, appeared in person and by attorney, JOHN U. HEMMI, and announced ready for trial. A jury was duly selected and sworn and evidence was heard, concluding on the 20th day of April, 2001, and on the 23rd day of April, 2001, the jury returned its verdict into court, which verdict is on file in this cause and incorporated herein by reference as fully as if set out verbatim in this judgment.

The court finds that the pleadings of Petitioner are in due form and after receiving the evidence, finds that a divorce should be granted.

The court finds that it has jurisdiction over the subject matter and the parties in this case. All persons entitled to citation were properly cited.

Divorce was previously granted in this cause by the Honorable Charles Ramsay, on July 7, 2000, by interlocutory order, and it is accordingly ORDERED, ADJUDGED and DECREED that BOBBY JOE KENNEDY, Petitioner, and JANET MAY KENNEDY, Respondent, are divorced and the marriage between them is dissolved.

Petitioner, BOBBY JOE KENNEDY, resides at 130A Loving Trail, Dripping Springs, Hays County, Texas. His business address is 3705 Medical Parkway, Suite 340, Austin, Texas. His Social Security Number is 462-70-8598 and his Texas Driver's License Number os 05149889. Respondent, JANET MAY KENNEDY, resides at 130A Chestnut Ridge, Dripping Springs, Hays County, Texas. Her Social Security Number is 459-72-6283 and her Texas Driver's License Number is 04995636.

The Court finds that the following child, now under the age of eighteen years, was born to or adopted by the parties during their marriage and that no other children are expected:

Name:	WINCHESTER WILL KENNEDY
Sex:	Male
Birthplace:	Travis County, Texas
Birth date:	January 25, 1985
Home state:	Texas

The Court finds that the following orders are in the best interest of the subject child.

IT IS ORDERED, ADJUDGED AND DECREED that BOBBY JOE KENNEDY be and is hereby appointed Sole Managing Conservator of the subject child, and it is ORDERED, ADJUDGED AND DECREED that JANET

MAY KENNEDY be and she is hereby appointed Possessory Conservator of the child.

IT IS ORDERED, ADJUDGED AND DECREED that BOBBY JOE KENNEDY shall have the right to establish the residence of the child and he shall have possession of the child at all times not agreed to by the parties or covered by the order of possession set out below.

After considering the special circumstances of the sole managing conservator, the possessory conservator, and the child, the Court finds that a standard possession order is unworkable or inappropriate and that the terms and conditions for possession of the child provided for herein for the possessory conservator, JANET MAY KENNEDY, are in the best interest of the child.

IT IS ORDERED AND DECREED that JANET MAY KENNEDY may have possession of the child at any and all times mutually agreed to in advance by the parties and, in the absence of mutual agreement, it is ORDERED AND DECREED that JANET MAY KENNEDY shall have possession of the child under the specified terms set out below.

JANET MAY KENNEDY shall have the right to possession of the child as recommended by Dr. Thomas Lowry. In the event the parties live more than 100 miles apart, any necessary transportation and supervisory fees for visitation under supervision with mental health professions or otherwise, shall be borne 50/50 between BOBBY JOE KENNEDY and JANET MAY KENNEDY.

IT IS ORDERED AND DECREED, that, except as otherwise explicitly provided in this Order, the terms and conditions of possession of the child irrespective of the

distance between the residence of a parent and the child are as follows:

1. Surrender of Child by Bobby Joe Kennedy. BOBBY JOE KENNEDY shall surrender the child to JANET MAY KENNEDY at the beginning of each period of JANET MAY KENNEDY's possession at BOBBY JOE KENNEDY's residence.

2. Return of Child by Janet May Kennedy. JANET MAY KENNEDY shall surrender the child to BOBBY JOE KENNEDY at the end of each period of possession at JANET MAY KENNEDY's residence.

3. Personal Effects. Each parent is ORDERED to return with the child the personal effects that the child brought at the beginning of the period of possession.

4. Designation of Competent Adult. Either parent may designate any competent adult to pick up and return the child, as applicable. A parent or a designated competent adult must be present when the child is picked up or returned.

5. Inability to Exercise Possession. Each parent is ORDERED to give notice to the parent in possession of the child on each occasion that the parent will be unable to exercise that parent's right of possession for any specified period; repeated failure of a parent to give notice of an inability to exercise possessory rights may be considered as a factor in a modification of those possessory rights.

6. Inability to Return Child to School. If a parent's time of possession of a child ends at the time school resumes and for any reason the child is not or will not be returned to school, the parent in possession of the child is ORDERED to immediately notify the school and the other

parent that the child will not be or has not been returned to school.

7. Telephone Access. IT IS ORDERED that when the child is in the possession of one parent, the other parent shall have reasonable telephone access to the child.

Each parent is ORDERED to inform the other parent if the parent resides with for at least thirty (30) days, marries, or intends to marry a person who the parent knows:

(1) is registered as a sex offender under Chapter 62, Code of Criminal Procedure, as added by Chapt 668, Acts of the 75th Legislature, Regular Session, 1997; or

(2) is currently charged with an offense for which on conviction the person would be required to register under that chapter.

The notice must be made as soon as practicable but not later than the 40th day after the date the parent begins to reside with the person or the 10th day after the date the marriage occurs, as appropriate. The notice must include a description of the offense that is the basis of the person's requirement to register as a sex offender or of the offense with which the person is charged. Failure to notify in the matter required is a Class C misdemeanor.

EACH PERSON WHO IS A PARTY TO THIS ORDER IS ORDERED TO NOTIFY EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY OF ANY CHANGE IN THE PARTY'S CURRENT RESIDENCE ADDRESS, MAILING ADDRESS, HOME TELEPHONE NUMBER, NAME OF EMPLOYER, ADDRESS OF EMPLOYMENT, DRIVER'S LICENSE NUMBER, AND WORK TELEPHONE NUMBER. THE PARTY IS

ORDERED TO GIVE NOTICE OF AN INTENDED CHANGE IN ANY OF THE REQUIRED INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY ON OR BEFORE THE 60TH DAY BEFORE THE INTENDED CHANGE. IF THE PARTY DOES NOT KNOW OR COULD NOT HAVE KNOWN OF THE CHANGE IN SUFFICIENT TIME TO PROVIDE 60-DAY NOTICE, THE PARTY IS ORDERED TO GIVE NOTICE OF THE CHANGE ON OR BEFORE THE FIFTH DAY AFTER THE DATE THAT THE PARTY KNOWS OF THE CHANGE.

THE DUTY TO FURNISH THIS INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY CONTINUES AS LONG AS ANY PERSON, BY VIRTUE OF THIS ORDER, IS UNDER AN OBLIGATION TO PAY CHILD SUPPORT OR ENTITLED TO POSSESSION OF OR ACCESS TO A CHILD.

FAILURE BY A PARTY TO OBEY THE ORDER OF THIS COURT TO PROVIDE EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY WITH THE CHANGE IN THE REQUIRED INFORMATION MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO $500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS.

Notice shall be given to the other party by delivering a copy of the notice to the party by registered or certified mail, return receipt requested. Notice shall be given to the Court by delivering a copy of the notice either in person to

the clerk of the Court or by registered or certified mail addressed to the clerk. Notice shall be given to the state case registry by mailing a copy of the notice to State Case Registry, Central File Maintenance, P.O. Box 12048, Austin, Texas 78711-2048.

WARNINGS TO PARTIES: FAILURE TO OBEY A COURT ORDER FOR CHILD SUPPORT OR FOR POSSESSION OF OR ACCESS TO A CHILD MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO $500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS.

FAILURE OF A PARTY TO MAKE A CHILD SUPPORT PAYMENT TO THE PLACE AND IN THE MANNER REQUIRED BY A COURT ORDER MAY RESULT IN THE PARTY'S NOT RECEIVING CREDIT FOR MAKING THE PAYMENT.

FAILURE OF A PARTY TO PAY CHILD SUPPORT DOES NOT JUSTIFY DENYING THAT PARTY COURT-ORDERED POSSESSION OF OR ACCESS TO A CHILD. REFUSAL BY A PARTY TO ALLOW POSSESSION OF OR ACCESS TO A CHILD DOES NOT JUSTIFY FAILURE TO PAY COURT-ORDERED CHILD SUPPORT TO THAT PARTY.

It is ORDERED, ADJUDGED and DECREED that no child support shall be paid by JANET MAY KENNEDY at this time.

It is further ORDERED, ADJUDGED and DECREED that BOBBY JOE KENNEDY shall provide and maintain health insurance coverage for the subject child and pay all of his health care expenses.

The Court finds that the following is a just and right division of the parties' marital estate, having due regard for the rights of each party.

It is therefore ORDERED, ADJUDGED and DECREED that BOBBY JOE KENNEDY is awarded as his sole and separate property, free from any claim by JANET MAY KENNEDY and JANET MAY KENNEDY is hereby divested of any right, title and interest in and to all property listed in Schedule "A" which is attached hereto and incorporated by reference as if recited herein verbatim.

It is ORDERED, ADJUDGED and DECREED that JANET MAY KENNEDY is awarded as her sole and separate property, free from any claim by BOBBY JOE KENNEDY and BOBBY JOE KENNEDY is hereby divested of any right, title and interest in and to all property listed in Schedule "B", which is attached hereto and incorporated by reference as if recited herein verbatim.

It is ORDERED, ADJUDGED and DECREED that BOBBY JOE KENNEDY shall pay, as a part of the division of the estate of the parties, all debts and obligations listed on Schedule "C", which is attached hereto and incorporated by reference as if recited herein verbatim, and BOBBY JOE KENNEDY, shall indemnify and hold JANET MAY KENNEDY harmless from any failure by BOBBY JOE KENNEDY to so discharge such debts and obligations.

It is ORDERED, ADJUDGED and DECREED that JANET MAY KENNEDY shall pay, as a part of the division of the estate of the parties, all debts and obligations listed on Schedule "D", which is attached hereto and incorporated by reference as if recited herein verbatim, and JANET MAY KENNEDY shall indemnify and hold BOBBY JOE KENNEDY harmless from any failure by JANET MAY KENNEDY to so discharge such debts and obligations.

It is ORDERED, ADJUDGED and DECREED that the property listed on Schedule "E" belongs to the parties' children and as such, the children shall be responsible for retrieving and moving those items listed on Schedule "E".

It is ORDERED, ADJUDGED AND DECREED that the property belonging to the parties and listed on Schedule "F" is ORDERED sold as set out below and the proceeds split between the parties and debts paid as stipulated on Schedule "F". BOBBY JOE KENNEDY is placed in possession and control of the corporation which owns the above community assets to be sold and may sell the same. Regarding Alamo Ranch, Inc., BOBBY JOE KENNEDY is given all authority to control the stock and the corporation's sale. After payment of the debts, JANET MAY KENNEDY shall be entitled to receive the first $350,000.00 if that much remains. Should the net proceeds after payment of debts not reach $350,000.00, then JANET MAY KENNEDY is to receive whatever sum remains, if any, and the balance of the $350,000.00 is extinguished or lost. Any sums over $350,000.00 shall be split 50/50.

In the event JANET MAY KENNEDY wishes to purchase the Alamo Ranch, Inc. properties, she can sue a

$350,000.00 credit by taking the property in kind at the values set out in Schedule "F" instead of by net proceeds of sale. For the land items, the valuation to set off JANET MAY KENNEDY's $350,000.00 credit shall be that set out below as net. Should she wish to purchase the land with a mortgage, she must assume the debt against the same, whether in the corporation's name or in the parties' individual names. If JANET MAY KENNEDY wants the equipment or livestock, and if the parties cannot agree upon a price, JANET MAY KENNEDY must have the item or items appraised or valued by a person mutually acceptable to JANET MAY KENNEDY and to BOBBY JOE KENNEDY, and JANET MAY KENNEDY can use a portion of her $350,000.00 credit for the purchase.

JANET MAY KENNEDY must make her election to use a credit for an in kind distribution within thirty (30) days after the signing of this judgment. Otherwise, she shall only be entitled to receive the first $350,000.00 in net proceeds after expenses of sale and debts are paid, if that much remains, and then to 50% of anything over $350,000.00, if there is any excess.

It is ORDERED, ADJUDGED and DECREED that all sales of Alamo Ranch, Inc. properties by BOBBY JOE KENNEDY shall be by arm's-length transactions for fair market value.

The parties are ORDERED to sign any and all documents necessary, reasonable, and convenient to facilitate carrying out the orders herein.

It is ORDERED, ADJUDGED and DECREED that each party send to the other party, within three (3) days of its receipt, a copy of any correspondence from a creditor or

taxing authority concerning any potential liability of the other party.

Provisions Dealing with Division of Military Retirement Benefits

Division of Husband's Military Retirement

Payment of the United States Navy Disposable Retired Pay – The Court finds, in accordance with the Uniformed Services Former Spouses' Protection Act, 10 U.S.C. section 1408, as follows:

1. This Court has jurisdiction over BOBBY JOE KENNEDY. The domicile of the service member is in Hays County, Texas, other than because of military assignment.

2. Petitioner, BOBBY JOE KENNEDY, and Respondent, JANET MAY KENNEDY, were originally married on October 15, 1967, and that marriage lasted for 33 years or more, during which time BOBBY JOE KENNEDY served 25 years or more of creditable service towards retirement, approximately 16 years of which was active duty, and approximately 9 years of which was reserve duty.

3. BOBBY JOE KENNEDY's Social Security Number is 462-70-8598, his address is 130 Loving Trail, Dripping Springs, Texas 78620, and his birth date is April 20, 1944.

4. JANET MAY KENNEDY's Social Security number is 459-72-6283, her address is 130A Chestnut Ridge, Dripping Springs, Texas 78620, and her birth date is December 18, 1943.

5. The rights of BOBBY JOE KENNEDY under the Soldiers and Sailors Civil Relief Act of 1940 were fully complied with in this case.

6. The award of disposable retired pay made to JANET MAY KENNEDY in this decree is made in compliance with the Uniformed Services Former Spouses' Protection Act.

7. It is intended by this Court and the parties that the Secretary of the Navy or his designee make the payments due to JANET MAY KENNEDY of her interest in the disposable retired pay awarded in this decree directly to JANET MAY KENNEDY.

IT IS ORDERED that the Secretary of the Navy or his designated agent shall pay to JANET MAY KENNEDY directly, each month, her interest awarded in this decree in the United States Navy disposable retired pay paid as a result of BOBBY JOE KENNEDY's service in the United States Navy, the same being fifty (50%) percent of said benefits, plus fifty (50%) percent of all cost-of-living or other increases in the United States Navy disposable retired pay, on a monthly basis if, as, and when that retirement pay is due to be paid. It is the Court's intention that, if that dollar amount or award (or a larger sum as increases take effect) exceeds 50 percent of the disposable retired pay, the Secretary of the Navy or his designated agent shall pay to JANET MAY KENNEDY the maximum amount allowable under the Uniformed Services Former Spouses' Protection Act and BOBBY JOE KENNEDY shall be responsible for paying the balance of the award each month to JANET MAY KENNEDY, and it is accordingly ORDERED.

IT IS ORDERED that BOBBY JOE KENNEDY is appointed trustee for the benefit of JANET MAY KENNEDY to the extent of JANET MAY KENNEDY's interest in the United States Navy disposable retired pay paid as a result of BOBBY JOE KENNEDY's service in the United States Navy, and BOBBY JOE KENNEDY is ORDERED to pay to JANET MAY KENNEDY her interest in that pay each month as it is received by BOBBY JOE KENNEDY and in no event later than the fifth day of each month in which BOBBY JOE KENNEDY received that retirement pay, beginning the fifth day of the first month in which the retirement pay is paid following the date the Final Decree of Divorce is signed by the Court. This paragraph applies to the extent that the Secretary of the navy or his designee fails to pay directly to JANET MAY KENNEDY her monthly entitlement as awarded in this decree, or any portion of that monthly entitlement.

For purposes of this decree, BOBBY JOE KENNEDY is specifically directed, on penalty of contempt, to pay JANET MAY KENNEDY's interest in the disposable retired pay as ordered in this decree. BOBBY JOE KENNEDY is specifically directed that he is not relieved of that obligation except to the extent that he is specifically notified that 100 percent of JANET MAY KENNEDY's interest in the retirement benefit has been directly paid by the Secretary of the Navy or his designated agent.

IT IS ORDERED that the payment of the disposable retirement pay awarded in this decree to JANET MAY KENNEDY shall continue until the death of BOBBY JO KENNEDY or JANET MAY KENNEDY.

IT IS ORDERED that, since JANET MAY KENNEDY is entitled to a percentage interest in any cost-of-living or

other increase in the United States Navy disposable retired pay, BOBBY JOE KENNEDY shall send to JANET MAY KENNEDY at the address indicated above, or such other address as is received in the future, a copy of each retired pay voucher that he receives in the future.

The Court further finds that at the present time JANET MAY KENNEDY is named beneficiary under the Armed Services Survivor Benefit Plan and that BOBBY JOE KENNEDY's election to provide the Survivor Benefit Plan benefits to JANET MAY KENNEDY should be continued and maintained in full force and effect and should not be altered or withdrawn by BOBBY JOE KENNEDY during his lifetime.

IT IS THEREFORE ORDERED that BOBBY JOE KENNEDY shall when first able to do so designate JANET MAY KENNEDY, his former spouse, beneficiary under the Armed Services Survivor Benefit Plan and that the former spouse shall continue to remain beneficiary as former spouse under that plan for her share of such benefits as herein awarded to her, at her cost for such benefits.

IT IS ORDERED that BOBBY JOE KENNEDY shall immediately obtain, fully complete, sign, and return to the Secretary of the Navy or other entity required to effect the Armed Services Survivor Benefit Plan election all documents, papers, and forms necessary to provide the Armed Services Survivor Benefit Plan benefits to JANET MAY KENNEDY, as BOBBY JOE KENNEDY's former spouse, and shall simultaneously provide JANET MAY KENNEDY copies of those documents, papers, and forms.

IT IS ORDERED that BOBBY JOE KENNEDY do all other acts, deeds, and things that are necessary to immediately designate JANET MAY KENNEDY the beneficiary of the Armed Services Survivor Benefit Plan.

IT IS ORDERED that BOBBY JOE KENNEDY shall not provide, modify, amend, withdraw, or in any other manner alter the election to name JANET MAY KENNEDY beneficiary of the Armed Services Survivor Benefit Plan.

The Court further finds that JANET MAY KENNEDY is entitled to receive medical and dental care under the terms of 10 U.S.C. section 1071 et seq. and to commissary and post exchange privileges to the same extent and on the same basis as a surviving spouse of a retired member of the United States Armed Forces following the date this Decree of Divorce is signed. BOBBY JOE KENNEDY is therefore ORDERED to cooperate as necessary, by timely taking whatever action is necessary to enable JANET MAY KENNEDY to retain and/or obtain these benefits on JANET MAY KENNEDY's request.

Each party shall be responsible for his or her own attorney's fees incurred as a result of legal representation in this case.

It is ORDERED, ADJUDGED and DECREED that BOBBY JOE KENNEDY and JANET MAY KENNEDY shall be responsible for all federal income tax liabilities of the parties for the year 2000 according to the appropriate laws regarding federal income taxation, and this court makes no rulings regarding liability therefor.

It is ORDERED, ADJUDGED and DECREED that each party shall furnish such information to the other

party as is requested to prepare federal income tax returns for any year of marriage within thirty (30) days of receipt of a written request for information, and in no event shall the available information be exchanged later than March 1 of the applicable year. As requested information becomes available after that date, it shall be provided within ten (10) days of receipt.

All costs of court having been paid, no order for costs shall issue.

It is ORDERED, ADJUDGED and DECREED that all requested relief not specifically granted herein, is denied.

This judgment rendered on August 2, 2001, and modified this the 10th day of October, 2001.

/s/ Fred A. Moore
JUDGE PRESIDING

Schedule A

PROPERTY AWARDED TO BOBBY JOE KENNEDY

1) All personal and household property, clothing, jewelry, and other personal effects presently in possession of BOBBY JOE KENNEDY or subject to his control per the inventories.

2) 1996 Toyota Land Cruiser automobile, Vehicle Identification Number JT3HJ85J8T0143805, together with all indebtedness against the same and all keys, prepaid insurance and title documents.

3) Any and all life insurance policies insuring the life of BOBBY JOE KENNEDY, including but not limited to the American National Ins. Co. whole life policy, and the cash value therein.

4) 50% of any and all retirement funds or other benefits from Military Retirement if, as, and when received, which have been accumulated by BOBBY JOE KENNEDY.

5) The following financial institution accounts:

   a. 100% of the USAA Federal Savings Bank checking account number 01754243 in the name of BOBBY JOE KENNEDY.

   b. 100% of the NFCU checking and savings account number 2442312-001 & 704 in the name of BOBBY JOE KENNEDY.

   c. 100% of the Strong Municipal Money Market account number No.: 02-2600444296 used to pay quarterly tax payments.

   d. 45% of the total amount of the USAA Life Income account number V000004573.

   e. 45% of the total amount of the following Lincoln Life accounts

      (1) IFT Equity 500 Index Fund, Account Number 96-5974419

      (2) Aspen WW Growth, Account No.: 96-9574419

6) BOBBY JOE KENNEDY's medical practice known as Kennedy Dermatology Center.

7) 2.37% partnership interest in Medical Parkway Professional Association

8) Lease agreement on Lot 1, Big River Subdivision, California

9) Lease agreement on the 2001 BMW automobile

10) Artwork currently in the Kennedy Dermatology Center offices – Indian picture, Remington print and Don Warren Bluebonnet painting

11) Linda Walker funds per jury verdict – $15,827.14

12) Priscilla Kennedy funds per jury verdict – $6,000.00

Schedule "B"

PROPERTY AWARDED TO JANET MAY KENNEDY

1) All personal and household property, clothing, jewelry and other personal effects presently in possession of JANET MAY KENNEDY or subject to her control per the inventories, including the property in the storage shed.

2) 1965 Buick Riviera automobile, Vehicle Identification Number ___, together with all keys, prepaid insurance, and title documents.

3) Any and all life insurance policies insuring the life of JANET MAY KENNEDY, including but not limited to the American National Ins. Co. whole life policy, and the cash value therein.

4) 50% of any and all retirement funds or other benefits from Military Retirement, if, as, and when received, which have been accumulated by BOBBY JOE KENNEDY.

5) The following financial institution accounts:

   a. 100% of the Wells Fargo Bank checking account number 193971041 in the name of JANET MAY KENNEDY;

b. 100% of the Compass Bank account number 00852707, which includes the proceeds from the sale of the Pascal home and the bobcat.

c. 55% of total amount of the USAA Life Income account number V000004573.

e. 55% of the total amount of the following Lincoln Life accounts.

(1) IFT Equity 500 Index Fund, Account Number 96-5974419

(2) Aspen WW Growth, Account No.: 96-9574419

f. 100% of the Lincoln Life International Fund, Multifund Growth & Income Account No.: 96-5648260, in the name of JANET MAY KENNEDY.

Schedule C

DEBTS AWARDED TO BOBBY JOE KENNEDY

1) Any and all debt or obligations incurred by BOBBY JOE KENNEDY since the date of separation.

2) Any and all debt associated with the 1996 Toyota Land Cruiser automobile.

3) any and all debt associated with the lease agreement on the 2001 BMW automobile.

4) Any and all debt associated with any other property awarded to BOBBY JOE KENNEDY in this judgment.

5) 2000 IRS income taxes according to applicable federal income tax laws.

6) One-half of any debts not paid from proceeds of the sale of Alamo Ranch, Inc. and motor vehicles.

7) All attorney's fees, costs or expenses incurred by BOBBY JOE KENNEDY in connection with this action for divorce.

Schedule "D"

DEBTS AWARDED TO JANET MAY KENNEDY

1) 2000 IRS income taxes according to applicable income tax laws.

2) Miscellaneous medical bills in the amount of $1,267.12.

3) One-half of any debts not paid from proceeds of the sale of Alamo Ranch, Inc., and motor vehicles.

4) All attorney's fees, costs or expenses incurred on behalf of JANET MAY KENNEDY in connection with this action for divorce.

Schedule "E"

PROPERTY BELONGING TO THE PARTIES' CHILDREN

1) Macaw bird and cage belonging to Barrett Kennedy.

2) 2000 Chevrolet Camaro belonging to Priscilla Kennedy.

3) Honda 4-Wheeler belonging to Will Kennedy.

Schedule "F"

PROPERTY TO BE SOLD

Assets to be sold:

1) Honda 3-Wheeler

2) 1997 Teton Fifth Wheel RV secured by security agreement and having a negative value.

3) 1996 Dodge 3500 Truck secured by security agreement and having a negative value.

4) 1997 T100 Toyota Pickup secured by security agreement and having a negative value.

5) 10,000 shares of Alamo Ranch, Inc., which corporation consists of the following assets and liabilities:

Asset	Value/Debt	Net
254 ac. Gillespie County	355,290.00/97,798.15	257,491.85
19 ac. Hays County	85,500.00/14,840.07	70,659.93
100 ac. Hays County	300,000.00/0.00	300,000.00
2.5 ac. Hays County	42,000.00/0.00	42,000.00
Livestock/Equipment	30,000.00/0.00	30,000.00

BOBBY JOE KENNEDY is placed in possession and control of the above community assets to be sold and may sell the same. Regarding Alamo Ranch, Inc., BOBBY JOE KENNEDY will be given all authority to control the stock and, therefore, the corporation's sale.

Debts to be Paid:

Upon sale of Alamo Ranch, Inc., the parties' secured debts on the property sold and their unsecured debts listed below shall be paid out of the proceeds.

1)	MBNA Mastercard #5329 0315 1837 1248	19,917, 22
2)	MBNA Visa 4800 1216 6500 5011	10,350.54
3)	NFCU Visa #4060 9500 9060 1316	6,617.29
4)	NFCU sharecheck #0146812-706	13,209.66
5)	USAA Visa #4270 8210 0393 4498	14,000.00
6)	UHFCU Visa # 4820-9871-1000-1409	3,449.73
7)	NFC Visa (Janet) #4060 9517 0381 8482	7,441.29
8)	UHFCU Visa (Janet) #4246 5200 1105 1771	4,119.00
9)	Neiman Marcus (Janet) #04 6678 80397 7	212.28
10)	MBNA #4264 2932 4402 1089	4,756.79
11)	AMEX #3727-113132-61002	310.68
12)	USAA MC/Visa #5491-2370-0184-5299	11,495.96
13)	Sears #06539370	1,991.69
14)	Sams #CG9A10759009889	1,028.14
15)	NFCU #5422 1708 0002 1065	808.00
16)	Penneys	2,064.45
17)	Foley's	282.43
18)	Scott & White	1,301.96
19)	J.W. Interiors	2,544.68
20)	J.W. Interiors	3,918.80
21)	Janet May Kennedy's 1999 IRS 1040 balance due	5,366.00

Should either party reduce the amounts due and owing on the above mentioned secured or unsecured debts prior to the distribution of the net proceeds of sale to the parties as provided for herein, then said party shall be entitled to reimbursement for said sums prior to the distribution of the net proceeds to the parties, if any such net proceeds remain for distribution to the parties.

[LOGO]

THE SUPREME COURT OF TEXAS

Orders Pronounced June 19, 2003

ORDERS ON CAUSES

THE FOLLOWING PETITIONS FOR REVIEW ARE DENIED:

03-0339 JANET MAY KENNEDY v. BOBBY JOE KENNEDY; from Hays County; 3rd district (03-02-00025-CV, ___ SW3d ___, 12-05-02)

[LOGO] **THE SUPREME COURT OF TEXAS**
Post Office Box 12248
Austin, Texas 78711 **(512) 463-1312**

August 28, 2003

Mr. Shawn Casey
5433 Westheimer, Suite 920
Houston, TX 77056-5375

Ms. Pamela E. George
1201 McDuffie, No. 134
Houston, TX 77019

RE: Case Number: 03-0339
Court of Appeals Number: 03-02-00025-CV
Trial Court Number: 99-1437

Style: JANET MAY KENNEDY
v.
BOBBY JOE KENNEDY

Dear Counsel:

Today, the Supreme Court of Texas denied the motion for rehearing of the above styled petition for review. Justice Enoch was not sitting.

Sincerely,

Andrew Weber, Clerk

by /s/ Claudia Jenks
Claudia Jenks, Chief Deputy

cc: Ms. Diane O'Neal, Clerk
Ms. Cecelia Adair